

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

In re:)	
)	
MARY ANN GREGG, dba FLORAL)	Adversary No. 97-6298
ARTISTRY MARKET PLACE,)	
)	
Debtor,)	
)	
_____)	
)	
ED CORRELL and REBECCA)	
CORRELL, husband and wife,)	
)	
Plaintiffs,)	MEMORANDUM OF DECISION
)	
vs.)	
)	
MARY ANN GREGG, dba FLORAL)	Case No. 96-30213
ARTISTRY MARKET PLACE,)	
)	
Defendant.)	
)	
_____)	

Douglas L. Mushlitz, CLARK & FEENEY, Lewiston, Idaho, for
Plaintiffs.

Jeanette Thiel, Lewiston, Idaho, for Defendant.

Ed and Rebecca Correll ("Correll") filed this adversary
proceeding to: (1) obtain a judgment against Mary Gregg
("Debtor") for the value of items allegedly converted and

sold to third parties; (2) to obtain a judgment of nondischargeability of the debt under 11 U.S.C. § 523(a)(6); and (3) to deny the Debtor a discharge under 11 U.S.C. § 727(a)(2); (4); and (7).

FACTS

The Debtor filed her petition for relief under Chapter 7 of Title 11, United States Code, on June 10, 1997. The Chapter 7 Trustee ("Trustee") filed his no asset report on July 14, 1997. This adversary was filed on September 8, 1997.

The Debtor listed as her sole household goods a hutch valued at \$200.00 and clothing for two at \$20.00. Her schedules listed these as the sole assets in her possession at the time of the filing of the petition. No other assets were revealed by the Debtor's schedules. The Debtor lists no income from employment and no expenses with the explanation that she lives with her current husband and he pays the expenses. The Debtor also reveals on her schedules that she helps out in her current husband's business. The Debtor lists no transfers of property within the year immediately preceding the filing of her petition.

The evidence at the trial shows that on or about February 1, 1997, the Debtor sold two "Erb Hardware displays" to Meacham Mills for \$200.00. The Debtor also sold other items for which she received another \$75.00 at

about the same time. The items in question belonged to Correll pursuant to a judgment this Court issued in *Correll v. Hollenbeck*, 96-6223 (*In re Hollenbeck*, 96-20387(13)) on June 10, 1997. Prior to the judgment, a preliminary injunction was issued proscribing any transfer of the property in question by Michael Hollenbeck. The Debtor was in court on the day the preliminary injunction was issued.

DISCUSSION

A debt for "willful and malicious injury by the debtor to another entity or the property of another entity" will not be discharged in bankruptcy. 11 U.S.C. § 523(a)(6).

The Debtor sold property belonging to Correll which was under the control of Michael Hollenbeck and used the proceeds for personal purposes. Thus, the Debtor wrongfully exerted dominion over the personal property of another in denial of their rights amount to a conversion. *Adair v. Freeman*, 92 Idaho 773, 777 (1969) citing *Klam v. Koppel*, 63 Idaho 171.

The Debtor must have intended the consequences of her act to be "willful" for dischargeability purposes. *Kawaauhau v. Geiger*, __ U.S. __, 118 S.Ct. 974, 977 (1998). In that case, the Supreme Court found a medical malpractice judgment based on negligence to be dischargeable as lacking the requisite "willfulness" for nondischargeability. The Court

likens "willful" to the intent found in intentional torts. That is, that the actor intend the consequences of the act. *Id.*

The Debtor does not dispute the act of selling the items in question and using the proceeds for personal purposes. Nor does she dispute her attendance in court the day the injunction issued to her former husband proscribing any transfer of the property. By intentionally selling the items to a third party it is reasonable to infer the debtor's intent to permanently deprive the owner of his rights therein.

The Debtor admits receiving a total of \$275.00 for the items she sold to third parties and does not dispute the \$150.00 value placed on the book rack still in her possession. The Correll's have placed a total value of \$2,070.00 on the items sold by the Debtor. The Debtor has offered no contradictory evidence to dispute the values of the Correll's. Damages in the amount of \$2,220.00 will be awarded to Correll.

The objection to discharge filed by Correll was not substantiated by the evidence. While oversights occurred regarding transfers of property within a year of the filing of the petition, I do not deem such materially sufficient to

deny the Debtor her discharge. The motion for denying the Debtor a discharge will be denied.

Accordingly, judgment will be entered for Plaintiffs in the amount of \$2,220.00; the judgment is nondischargeable under 11 U.S.C. § 523(a)(6); and Plaintiffs' cause of action for denial of a discharge under 11 U.S.C. § 727 is denied.

Plaintiffs' counsel may prepare an appropriate form of judgment.

Dated this 6th day of May, 1998.

ALFRED C. HAGAN
UNITED STATES BANKRUPTCY JUDGE

ACH:jbc